IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.6167 OF 2006

Komal Mohankumar Rayana, .. Petitioner

Vs

Mohankumar Rayana, .. Respondent

Mr R.J.Lalwani i/b Mr S.I.Jayakar, for the petitioner.
Mr Janak Dwarkadas, senior counsel, a/w Ms Madhavi Diwan and Ms Mrunalini Deshmukh, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 04.10.2006

PC:

1. Heard Mr Lalwani, learned counsel for the petitioner and Mr Dwarkadas, learned senior counsel, for the respondent.

2. This writ petition is directed against the order dated 25.8.2006 passed by the Family Court, Bombay at Bandra, on the application at Exhibit-7, allowing the prayer for consolidation of M.J.Petition No.A-274 of 2006 and the two custody petitions, bearing nos D-65 of 2005 and D-66 of 2005.

3. From amongst the aforesaid proceedings, the petitioner-wife, on 12.12.2005, has filed the custody petition bearing No D-65 of 2005 whereas the custody petition No. D-66 of 2005 has been filed by the respondent-husband on 14.12.2005. Insofar as the

Petition No.A-274 of 2006 is concerned, it has been filed by the respondent-husband on 7.2.2006 seeking divorce on the ground of cruelty. Admittedly, several orders have been passed by the Family Court as also by this Court in the Custody Petitions and by virtue of the interim order, the female child, who is hardly 4.1/2 years old, has remained in the custody of the respondent-husband and the petitioner-wife is given weekly access to the child.

4. The Family Court, while allowing the application at Exhibit-7 in paragraphs 14 and 16 of the impugned order, has made the following observations:

> **14.** An apprehension has been expressed by the respondent that merger of the proceedings or rather the prayer for consolidating the proceedings is an ingenious attempt to harass, protract the proceedings for custody of the child and with thousands of cases pending before this Court there is no need to pay any special attention to this case and decide it by merging it to the custody petitions as various issues would be raised requiring attention of this Court which would be time consuming and thereby frustrate her custody claim. These apprehensions to my mind are absolutely unfounded. There cannot be any doubt that every court, be it an ordinary Civil Court or a Special Court like Family Court, is over burdened with constant flow of litigations. But, that itself does not mean that the Court should

withhold its own hand on adjudicating the controversies as expeditiously as possible if permissible and thereby bring an end to the matrimonial disputes once for all. Moreover, Section 21B of The Act mandates that all matrimonial litigations should be disposed of within six months from the date of its filing and more or less the same intent is reflected from the sprit of The Family Court Act.

16. It is also made clear that the petitioner should also submit his reply to the interim application for maintenance within three weeks as directed to the respondent so that the matter can be processed expeditiously and thereby make the petition ready for effective hearing. The last but not the least the other basic reason for consolidation is over lapping of the issues in so far as the question of appreciation, evaluation of the rival contentions of the parties on which they have counter blast each other is concerned. Moreover, I need not point out that even while deciding the divorce claim under Section 13 of The Act, the court is bound to take into consideration the question of custody maintenance of the minor child, as provided under Section 26 of The Act. The spouses have got estranged, they are blaming each other for disharmony and breakdown in their marital life, and these differences, accusations are the foundations on the basis of which claims for custody and divorce have been made by them Therefore, in the light of the above discussed circumstances, prayer for amalgamation of the present petition with the two custody petitions D-65/2005 and D-66/2005 stands allowed with cost in cause. Directions regarding submission of the written statement by the respondent and reply to the interim maintenance application by the petitioner to be implemented meticulously with a clear

> understanding that neither of the parties shall be granted any further time for submitting their respective contentions on record in that regard. It is also further made clear that these petitions shall be given top priority by this Court with a sincere hope that the learned counsel appearing for the litigating spouses would co-operate in honouring the direction issued by the High Court in disposing of the matter within stipulated time. Once the interim stage are over, effective hearing would take place on day to day basis. Order accordingly.

5. Mr.Lalwani, learned counsel for the petitioner, has challenged the impugned order, mainly on two grounds: firstly, in the face of the order passed by this Court dated 11.7.2006 by the Division Bench in Writ petition No. 4096 of 2006, under any circumstances, the Family Court ought not to have passed the order consolidating all the proceedings. He submitted that the Family Court has overlooked the order passed by the Division Bench dated 11.7.2006. Secondly, it will not be possible for the Family Court to dispose of all the three petitions by the end of 31.12.2006 as directed by the Division Bench. He submitted that insofar as the divorce petition is concerned, it has reached only a stage of filing of written statement and looking to the nature of the allegations made by the parties against each other, it would not be possible for the Family Court to dispose of all the three petitions together.

He further submitted that the petitioner will not be able to concentrate on her custody petition if she is forced to face divorce petition also. On the other hand, Mr Dwarkadas, learned senior counsel for the respondent-husband, besides his submissions in reply to the submissions of Mr Lalwani, invited my attention to the observations made by the Family Court in the impugned order to submit that in order to observe the mandate of section 21(b) of the Hindu Marriage Act the Family Court has rightly exercised its jurisdiction in passing the order. He submitted that it is not difficult for the family court to dispose of all the petitions together within the time frame provided the petitioner co-operates and does not create any hurdle in the progress of the proceedings. He further submitted that no case for exercising jurisdiction under Article 227 of the Constitution of India is made out.

6. Keeping in view the submissions advanced by the learned counsel for the parties and considering the overall facts and circumstances of the case and that this is a matrimonial dispute involving a custody of the child and considering the order passed by this Court dated 11.7.2006 in Writ petition No.4096 of 2006 I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India.

7. The Division Bench, while disposing of Writ petition No.4096 of 2006 vide order dated 11.7.2006, in paragraphs 3,4,5 and 6, had made the following observations:

> **3.** At this stage, the counsel for the respondent submits that the custody petitions being Nos. 65/2005 and 66/2005 be ordered to be heard at an early date.
> **4.** Mr.Janak Dwarkadas, senior counsel for the petitioner would submit that the two custody petitions as well as divorce petition (M.J.Petition No. A-274/2006) be transferred to some other Judge of the Family Court.
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> **5.** Ordinarily, we would not have entertained the prayer for transfer of the petitions to some other Judge but in view of the fact that the respondent desires the custody petition Nos. 65/2005 and 66/2005 to be heard at an early date and that may not be possible if these petitions are tried by the Principal Judge, Family Court as besides the judicial work, she also has to give considerable time on the administrative work.
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> **6.** We, accordingly, by consent of the senior counsel and the counsel for the parties transfer the custody petition Nos. 65/2005, custody petition No.66/2005 and the Matrimonial Petition (M.J.Petition No. A.-274/2006) to Court No.5, Family Court, Bandra. We further direct that the custody petitions being 65/2005 and 66/2005 shall be heard by Court Room No.5, Family Court, Bandra at an early date and disposed of as early as possible and preferably by 31st December, 2006.

None of the parties to the petition has approached the Division Bench either for extension of time or seeking the prayer that has been made in the application at Exhibit-7. Under any circumstances, the direction passed by the Division Bench will have to be scrupulously observed and the custody petitions will have to be disposed of within the timeframe, as mentioned in paragraph no.6 of the order dated 11.7.2006. The Family Court, while passing the impugned order, was conscious of the order of the Division Bench and has still allowed the application by making the aforesaid observations in paragraphs 14 and 16 thereof. I do not know and I do no wish to express any opinion as to whether it is possible for the Family Court to dispose of all the three petitions as indicated in the impugned order. The learned Judge, who has passed the order, it is his responsibility to dispose of all the three petitions on or before 31.12.2006. I would not like to disturb the impugned order and I leave it to the learned Judge to decide all the three petitions together as indicated therein. However, under any circumstances, the Court will have to decide the custody petitions on or before 31.12.2006 as directed by the Division Bench. Keeping that in view, if, at any stage of the proceedings, the Family Court finds it difficult to

dispose of all the three petitions on or before 31.12.2006, it should proceed with the hearing of the custody petitions only. In other words, while proceeding with the hearing of all the three petitions together, the Family Court, at all the time and stages of the proceedings, shall bear in mind that it has to dispose of the custody petitions by

31.12.2006.

8. The petitioner-wife has not filed a written statement so far in petition No.A-274 of 2006. Mr Lalwani, learned counsel for the petitioner, states that the petitioner shall file her written statement within two weeks from today and she has given an undertaking to that effect before the Family Court. His statement is accepted. The Family Court shall proceed with the hearing of all the three petitions together. Parties are directed to cooperate disposal of all the three petitions within timeframe. The learned Judge "may consider" to direct the husband to step into witness box first, who is the petitioner in the two petitions out of three, and lead evidence in both the petitions together. As far as possible the trial may be conducted on day to day basis. The learned Judge, however, shall assess the situation on or about 15.11.2006 and see whether it is

possible to dispose of all the three petitions together on or before 31.12.2006 and if that is not possible, to proceed with the hearing of only the custody petitions. With these directions, this petition is disposed of.

(D.B.BHOSALE,J.)